

**REMARKS**

Upon entry of the foregoing amendments, claims 18, 27-28, 30 and 32-34 are currently pending in the present application. Claim 18 is amended to include the subject matter of claim 25, which has now been cancelled without prejudice or disclaimer to the subject matter contained therein. The amendment made with the expectation that it will place this application in condition for allowance. The amendment does not introduce new matter within the meaning of 35 U.S.C. §132. Accordingly, entry of the amendment is respectfully requested.

In view of the foregoing, further and favorable consideration is respectfully requested.

**1. Claim Rejection - 35 U.S.C. §103(a)**

In the Official Action, claims 18, 25, 27, and 32-34 are rejected under 35 U.S.C. 103(a) as being unpatentable over Trogolo et al. (U.S. Patent No. 5,762,638) in view of Bates et al. (U.S. Patent No. 6,530,951).

Applicant respectfully traverses this rejection. By way of the preceding amendments, the foregoing amendments and the attached §132 declaration, the rejection of claims 18, 27, and 32-34 under 35 U.S.C. 103(a) as being unpatentable over Trogolo et al. in view of Bates et al. is obviated and overcome.

As submitted in the last response, a *prima facie* case of obviousness has not been successfully established against the rejected claims. The requirements for a *prima facie* case are not repeated herein from the previous response, but are incorporated by reference from the response filed on April 23, 2008 in their entirety.

The instant subject matter is directed to:

A vascular prosthesis for replacement of hollow organs with antibiotic long-term action with a basic structure which defines the form of the prosthesis and which is made of substantially non-absorbable or only slowly absorbable polymer material and of a coating of an absorbable material, with a layer of metallic silver situated on the polymer material and underneath the coating,

wherein the silver layer is a substantially closed layer having thickness of 2500 to 1000 Å, breaks down in the body at a maximum of 5 to 10% per annum, adheres firmly on the polymer material by vapor-deposition, and wherein silver atoms of the silver layer are impressed into the polymer surface of the basic structure and the silver layer is **composed exclusively of elemental silver**; and

the basic structure is porous made from a textile material, the silver layer leaves the pores open and the absorbable coating layer is an impregnation which seals the pores of the prosthesis and is chosen such that it is absorbed at the latest after four months.

As such, Applicant submits that the combination of Trogolo et al. and Bates et al. fail to teach or suggest all the elements of the presently claimed vascular prosthesis, and thereby fail to render the presently claimed vascular prosthesis obvious.

Applicant's prosthesis possesses a laminate-type structure that is based on an elemental silver layer that is composed exclusively of elemental silver and that is interposed between a base structure polymer material and an absorbable polymer coating material. This layering results in initial high silver release after implantation which is due to an activation or corrosion of the metal layer. See, U.S. Published Patent Application No. 2006/0051544 A1, page 1, paragraph 8. This is a special technical effect that is shown in Applicant's comparison tests, and is neither disclosed by Trogolo et al. nor by Bates et al. See, U.S. Published Patent Application No. 2006/0051544 A1, page 2, paragraph 17 through page 3, paragraph 23. The initial high silver release of the instant vascular prosthesis minimizes the risk of post surgical infections that can typically occur during the first day after surgery and which require, in many cases, further surgical interference.

Those of skill in the art were clearly not aware of the aforementioned technical effect resulting from the special layering of Applicant's prosthesis, since the documents of Trogolo et al. and Bates et al. are completely silent with respect to silver release behavior. Therefore, those of skill in the art would have no impetus to combine Trogolo et al. and Bates et al.

Accordingly, the combination of Trogolo et al. and Bates et al. do not render in the instantly claim subject matter obvious.

## **2. Claim Rejection - 35 U.S.C. §103(a)**

In the Official Action, claims 28 and 30 are rejected under 35 U.S.C. 103(a) as being unpatentable over Trogolo et al. (above) in view of Bates et al. (above) in further view of Shikani et al. (U.S. Patent No. 5,762,638).

Applicant respectfully traverses this rejection. By way of the preceding amendments, the foregoing amendments and the attached §132 declaration, the rejection of claims 28, and 32 under 35 U.S.C. 103(a) as being unpatentable over Trogolo et al. in view of Bates et al. in further view of Shikani et al. is obviated and overcome.

The instant subject matter, as well as Trogolo et al. and Bates et al., are discussed above. Shikani et al. has been discussed in the previous response.

Shikani et al. do not remedy the deficiencies of Trogolo et al. and Bates et al. discussed above.

Shikani et al. disclose invasive medical devices in which a polymer has been coated or incorporated with anti-infective and/or anti-inflammatory agents and in which the polymer comprises pharmaceutical compositions that have a delayed or sustained release from said polymer. Shikani et al. do not disclose an elemental silver layer in combination with an absorbable material with the particular laminate-type structure in the presently claimed vascular prosthesis, let alone the vapor-deposition method and the thickness of the silver layer.

Accordingly, the combination of Trogolo et al., Bates et al., and Shikani et al., do not render the instantly claimed subject matter obvious.

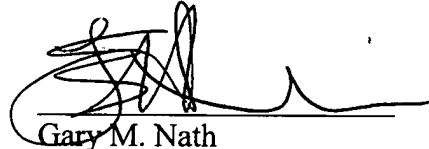
**CONCLUSION**

Based upon the above remarks, the presently claimed subject matter is believed to be patentably distinguishable over the prior art of record. The Examiner is respectfully requested to reconsider and withdraw the outstanding rejections and allow all pending claims 18, 27-28, 30 and 32-34. Favorable action with an early allowance of the claims pending in this application is earnestly solicited.

The Examiner is invited to contact the undersigned attorney if it is believed such contact will expedite the prosecution of the application. Also, if the Examiner has any questions or comments regarding this matter, he is welcomed to contact the undersigned attorney at the below-listed number and address.

Respectfully submitted,

**THE NATH LAW GROUP**

A handwritten signature in black ink, appearing to read 'Gary M. Nath', is written over a horizontal line.

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Date: November 21, 2008

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